

FILED BY CLERK

APR -9 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In re	)	2 CA-CV 2007-0100
	)	DEPARTMENT A
\$5,598 IN U.S. CURRENCY; 1997	)	
TOYOTA PICK-UP, AZ REG. AC-	)	<u>MEMORANDUM DECISION</u>
03530; 1995 CMT HORSE TRAILER,	)	Not for Publication
AZ REG. 26354; ITEMS LISTED ON	)	Rule 28, Rules of Civil
EXHIBIT "A" ATTACHED.	)	Appellate Procedure
	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV-200500351

Honorable William J. O'Neil, Judge

AFFIRMED

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Harsimmer S. Shergill

Buckeye  
In Propria Persona

James P. Walsh, Pinal County Attorney  
By Craig Cameron

Florence  
Attorneys for Appellee

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P E L A N D E R, Chief Judge.

¶1 In this forfeiture action, appellant Harsimmer Shergill, appearing in propria persona, appeals from the trial court's entry of summary judgment, ordering forfeiture of

property in favor of appellee, the State of Arizona. Finding that Shergill lacks standing to contest the order and that his other arguments are waived, we affirm.

### **Background**

¶2 “[W]e view the evidence in the light most favorable to upholding the judgment.” *In re \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 2, 18 P.3d 85, 87 (App. 2000). After initiating civil forfeiture proceedings in March 2005, *see* A.R.S. § 13-4308, the state filed a complaint in May seeking judicial forfeiture of \$5,598.00, a 1997 Toyota pick-up truck, a horse trailer, and other miscellaneous items including weapons and electronics. At that time the state also served Shergill with requests for admission and interrogatories. In its complaint, the state alleged the property had been obtained through “a violation of offenses included in the definition of racketeering,” *see* A.R.S. § 13-2301(D)(4),<sup>1</sup> including “fraud, theft, and forgery.”

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<sup>1</sup>Section 13-2301(D)(4) provides in pertinent part:

“Racketeering” means any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or county in which the act occurred . . . and the act involves[:]

. . . .

(b) Any of the following acts if committed for financial gain:

. . . .

(iv) Forgery.

(v) Theft.

¶3 Represented by counsel, Shergill moved several times to stay the forfeiture proceedings until the criminal prosecution against him had been completed. The trial court granted the motions. In February 2006, a jury in the criminal case found Shergill guilty of one count of identity theft, three counts of forgery, and one count of misconduct involving a weapon. *See State v. Shergill*, No. 2 CA-CR 2006-0188 (memorandum decision filed March 16, 2007). In March, the court granted the state’s motion to lift the stay in this action.

¶4 Instead of answering the complaint and responding to the state’s discovery requests, Shergill filed a motion for summary judgment, which the trial court later denied. In January 2007, Shergill’s counsel moved to withdraw for financial reasons. The trial court granted the motion.<sup>2</sup>

¶5 In February 2007, the state moved for summary judgment. Shergill, representing himself, answered the requests for admission the state had served on him two years earlier and responded to the motion. He also filed an unauthorized “response” to the state’s reply, *see* Rule 56(c)(1), Ariz. R. Civ. P., and attached his answers to the state’s interrogatories. Because Shergill failed to file a claim asserting an interest in the property for which forfeiture was sought, the trial court granted summary judgment in favor of the

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<sup>2</sup>After the trial court granted counsel’s motion to withdraw, the state objected, asking the court to set aside the order and “[c]ompel Counsel for Claimant to prepare and file an answer to the complaint, an initial disclosure statement, and responses to non-uniform interrogatories before withdrawing.” As far as the record reflects, the court did not rule on that objection.

state. The court then ordered the property forfeited.<sup>3</sup> “We have jurisdiction pursuant to A.R.S. § 12-2101(B).” *In re \$24,000 U.S. Currency*, 217 Ariz. 199, ¶ 6, 171 P.3d 1240, 1242 (App. 2007).

### **Discussion**

¶6 On appeal, Shergill contends his counsel below was “ineffective” because he “failed to file an answer to the state’s complaint and also failed to inform [Shergill] as to the status of his case . . . , thus allowing [his] case to decline into default.” Citing Rules 55(c) and 60(c)(3), Ariz. R. Civ. P., he requests that “the default judgment entered in this case” be set aside and that he be given an opportunity “to answer the initial complaint.” In response, the state maintains “Shergill lacks standing . . . because he has never become a claimant or a party to the underlying action.”

¶7 A person seeking to challenge an in rem forfeiture proceeding under A.R.S. § 13-4311 must file “a proper and timely claim asserting an interest in the property.” *In re \$5,500.00 U.S. Currency*, 169 Ariz. 156, 160, 817 P.2d 960, 964 (App. 1991). Section 13-4311(D) provides: “An owner of or interest holder in the property may file a claim against the property, within thirty days after the notice, for a hearing to adjudicate the validity of his claimed interest in the property.” Section 13-4311(E) sets forth the specific information that

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<sup>3</sup>Shergill filed his notice of appeal after the trial court entered an order granting summary judgment in favor of the state but before the court entered its final forfeiture order. Even if an appeal is premature, however, that would not deprive this court of jurisdiction when the appellee is not prejudiced and a final judgment is later entered. *See Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981).

must be included in the claim. *See In re \$ 70,269.91 U.S. Currency*, 172 Ariz. 15, 20, 833 P.2d 32, 37 (App. 1991). “If the claim is not timely filed, the person does not become a claimant and lacks standing to contest the forfeiture.” *In re \$47,611.31 U.S. Currency*, 196 Ariz. 1, ¶ 4, 992 P.2d 1, 2 (App. 1999).

¶8 The record reflects that the state sent Shergill a “Notice of Pending Seizure and Uncontested Forfeiture” pursuant to A.R.S. §§ 13-4307 and 13-4309(1) in January 2005. Within the required thirty days, Shergill sent to the state a “petition,” in which he “claim[ed] an ownership interest in the . . . seized property.” *See* § 13-4309(2) (in uncontested forfeiture proceeding, property owner or interest holder “may elect to file either a claim with the court . . . or a petition for remission or mitigation of forfeiture with the attorney for the state”). That document, however, was not filed with the court and did not relieve Shergill of his obligation to later file a timely claim for purposes of contesting the forfeiture once the state filed this civil in rem action. *See* § 13-4311; *see also In re \$47,611.31 U.S. Currency*, 196 Ariz. 1, ¶ 4, 992 P.2d at 2 (failure to file claim in trial court deprives claimant of standing).

¶9 Section 13-4311(B) allows the state to bring a civil in rem forfeiture proceeding “in addition to or in lieu of . . . the uncontested civil forfeiture procedures set forth in § 13-4309.” The state did so by filing this action in May 2005. When the state initiated judicial forfeiture pursuant to § 13-4311, Shergill had thirty days to file a claim to assert an interest in the property, *see* § 13-4311(D), and twenty days to answer the

complaint. *See* § 13-4311(G); *see also In re \$5,500 U.S. Currency*, 169 Ariz. at 158, 817 P.2d at 962 (“Within twenty days after service of the complaint, the claimant shall file and serve an answer to the complaint and a claim if one has not already been filed.”). Shergill failed to file either a claim or answer, even after the stay of proceedings had been lifted below.

¶10 Nonetheless, Shergill maintains that, because he “was the only individual that received notice[,]” the state clearly knew “he was the owner of the property.” Under § 13-4311, however, a person does not gain standing to claim an interest in the property until he files a timely claim. *See In re \$70,269.91 U.S. Currency*, 172 Ariz. at 20, 833 P.2d at 37. Therefore, Shergill’s failure to file a claim and answer precludes him from contesting the forfeiture order. *See State v. Jackson*, 210 Ariz. 466, ¶ 21, 113 P.3d 112, 117 (App. 2005) (“[A]ppellant had an obligation to file an answer.”); *In re \$5,500 U.S. Currency*, 169 Ariz. at 159, 817 P.2d at 963 (“A person who desires to challenge forfeiture proceedings under A.R.S. section 13-4311 must file both a claim and, eventually, an answer.”).

¶11 Shergill also argues that because he “was not timely served with motions or court orders personally,” we “should remand this case back to [the trial] court.” As discussed in *In re \$5,500 U.S. Currency*, however, the property, not Shergill, was the defendant in this case. 169 Ariz. at 158-59, 817 P.2d at 962-63. “His right to appear and defend is controlled by A.R.S. section 13-4311, which requires him to file a claim in order

to become a party.” *Id.* Shergill did not do so. Thus, the trial court did not err in ordering forfeiture due to his failure to file a claim.

¶12 Shergill primarily argues the forfeiture order should be set aside because his counsel below withdrew without consent and “left [him] to fend for himself which constitutes ineffectiveness.” Shergill cites ER 1.1, 1.3, 1.4, 1.16(d), Ariz. R. Prof’l Conduct, Ariz. R. Sup. Ct. 42, claiming his attorney not only withdrew without his permission but also was “paid for services he did not render.” Shergill also argues his attorney committed “egregious” error by failing to file a timely claim, “answer the state’s complaint, or comply with its request for interrogatories.” The record reflects that Shergill was represented by counsel at the time he should have taken those steps, none of which was taken. *See* § 13-4311. But even if counsel’s alleged malfeasance were relevant here, we cannot address any issues relating to counsel’s alleged “ineffectiveness” because Shergill failed to raise or argue those issues below. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13, 13 P.3d 763, 768 (App. 2000) (court of appeals generally does not consider arguments “raised for the first time on appeal”).

¶13 To the extent Shergill contends the judgment should be set aside under Rule 55(c) or Rule 60(c)(3), Ariz. R. Civ. P., due to his former counsel’s failure to file an answer and otherwise protect his legal interests, we again decline to address this issue because it was not raised below. In the trial court, Shergill did not move for relief from judgment or request the forfeiture order to be set aside. *See In re 1977 Honda Motorcycle*, 131 Ariz. 179, 182,

639 P.2d 369, 372 (App. 1981) (court will not consider setting aside default judgment when no motion made below to set it aside). Finally, we do not address Shergill's cursory, undeveloped constitutional arguments because he also did not raise them below and has not adequately argued or supported them with authority on appeal. *See In re \$5,500 U.S. Currency*, 169 Ariz. at 158 n.7, 817 P.2d at 962 n.7 (court declined to address due process argument when not raised in trial court and no legal authority cited); *see also* Ariz. R. Civ. App. P. 13(a)(5), (6).

### **Disposition**

¶14 The trial court's order of forfeiture is affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge